



RECEIVED
FEC MAIL
OPERATIONS CENTER
2550 M Street, NW
Washington, DC 20037-1350
202-457-6000

2004 JUN -7 P 4:52

Facsimile 202-457-6388

www.pattonboggs.com

Benjamin L. Ginsberg
Glenn M. Willard
bginsberg@pattonboggs.com

RECEIVED
FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

2004 JUN -8 10:50

June 7, 2004

COURIER

Mr. Jeff S. Jordan
Supervisory Attorney
Complaints Examination & Legal Administration
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

Re: MUR 5445 (Quentin Nesbitt)

Dear Mr. Jordan:

On behalf of Respondent Quentin Nesbitt, this letter responds to the Complaint received on May 3, 2004. This Commission should find no reason to believe Respondent violated the Federal Election Campaign Act ("FECA") by earmarking contributions to a candidate through several PACs, thus making an excessive contribution in the name of another. Respondent did not have knowledge that the political committees to which he made contributions would contribute to a candidate to whom he had already made a contribution.

Commission regulations permit contributions to both candidates and political committees that also support the same candidates in the same election. Moreover, these regulations explicitly permit a contribution to a PAC that "has supported or anticipates supporting the same candidate in the same election." 11 C.F.R. § 110.1(h). The only condition is that the contributor not have "knowledge" that a substantial portion of his or her contribution "will be" contributed to that same candidate in the same election, and that the contributor not retain control of the funds. 11 C.F.R. § 110.1(h)(2)(3). This provision does not forbid a contributor to a committee from knowing the candidates that PAC "has supported" (which is a matter of public record); only that the contributor not have knowledge that that committee "will" contribute to a candidate in the same election.

No prudent contributor gives to a PAC without knowledge of its political philosophy and the type of candidates that committee has supported. More prudent contributors will exercise due diligence and find out specifically which candidates the PAC has previously supported. If a committee "anticipates" contributing to a candidate to whom one of its individual contributors has already contributed (and does eventually contribute to that same candidate), this convergence

Mr. Jeff S. Jordan

June 7, 2004

Page 2

of outcomes is not a contribution in the name of another. It's the normal result of being attentive to the giving patterns of recipient PACs.

In this instance, Mr. Nesbitt has a long track record of contributing to conservative candidates and PACs, having given \$78,500 since 1997. In addition, of the six PACs at issue to which he made contributions, only five of them made a contribution to *Geoff Davis for Congress, Mike PAC* did not, so there is no issue concerning Mr. Nesbitt's contribution to that PAC.

Of the remaining five PACs, four contributed to *Geoff Davis for Congress* in the 2002 election, his first run for a seat in the House of Representatives.¹ In addition, as the attached charts indicate, all five PACs had contributed to at least one candidate to whom Quentin Nesbitt had previously made contributions. Attachment A. It was not, therefore, unreasonable to expect the same PACs that contributed to Geoff Davis during his first (close but unsuccessful) run for Congress might do so again if they had sufficient funds.

Moreover and decisively, Mr. Nesbitt did not, under Commission regulations, 11 C.F.R. § 110.6(b), earmark any of the contributions at issue. He did not: instruct any of the officers or agents of the PACs at issue to contribute to *Geoff Davis for Congress*; place a designation upon his contributions to these committees; or place an encumbrance upon his contributions to them. Nesbitt Aff. ¶ 2, Attachment B (notarized version to follow). He also had no knowledge that these PACs would contribute to *Geoff Davis for Congress*. *Id.* It was his understanding that all of his contributions to these committees were in the PACs' complete control. *Id.* As the contribution checks bear witness, they contained no encumbrance. Attachment to Nesbitt Aff; see also MUR 5125 First General Counsel's Report ("The documentary evidence also does not support complainant's assertions. A copy of the contribution check . . . showed no apparent designation to a particular candidate or committee.").

Mr. Nesbitt did have communications with the Campaign for Working Families ("CWF") pertaining to requests for CWF Chairman Gary Bauer use his influence to unite local conservative leaders behind Geoff Davis' candidacy and to provide early financial support to fend off primary challengers. Never, however, did Mr. Nesbitt even ask an officer or agent of CWF to direct his contribution to CWF to *Geoff Davis for Congress*. Nesbitt Aff. ¶ 3. Merely asking a PAC Chairman to support a particular candidate is not a FECA violation; it's part and parcel of the Freedom of Speech. Only when a contribution to a PAC comes with a concomitant instruction, designation or encumbrance can it be considered earmarked. That simply didn't happen here.

¹ *Campaign for Working Families* contributed \$5,000, *Family First* contributed \$2,500, *Majority Initiative to Keep Electing Republicans* contributed \$1,000; and the *Milead Fund* contributed \$500. Only the *Carolina Majority PAC* did not contribute to *Geoff Davis for Congress* in the previous election cycle. This PAC, however, only came into existence on April 23, 2002 and had few resources to distribute during that cycle.



Mr. Jeff S. Jordan
June 7, 2004
Page 3

Consequently, the Commission should find no reason to believe Respondent Quentin Nesbitt violated the FECA by earmarking contributions and, thereby, making a contribution in the name of another.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ben L. Ginsberg', written over the printed name.

Benjamin L. Ginsberg
Glenn M. Willard

Attachments

25044111001

Campaign for Working Families (Contributions)				
<i>Candidate</i>	<i>Nesbitt, Quentin Contribution</i>	<i>Date and Amount</i>	<i>CWP Contribution</i>	<i>Date</i>
Robert Barr	\$500.00 \$500.00	8/20/02 5/01/03	\$1000.00	10/08/98
CWP	\$1000.00 \$1000.00 \$500.00 \$5000.00 \$2000.00 \$3000.00	9/06/00 12/18/00 12/12/01 02/12/02 04/29/03 06/10/03	—	—
George Voinovich	\$1000.00 \$500.00 \$1000.00	03/03/97 01/28/98 06/19/00	\$1000.00	10/19/98
Edwin Williams	\$200.00 \$300.00	02/23/98 04/28/98	\$2000.00 \$5000.00	12/26/97 06/29/98
Edward Bryant	\$1000.00	06/20/02	\$2500.00 \$1000.00	05/22/02 06/25/02
Steve Chabot	\$1000.00 \$1000.00 \$1000.00 \$500.00 \$500.00 \$1000.00 \$1000.00	01/22/98 09/03/98 03/19/99 06/08/00 06/08/00 06/08/00 03/20/02	\$5000.00 \$5000.00	05/04/98 10/08/98
Anthony Perkins	\$1000.00	10/28/02	\$4000.00 \$5000.00	06/25/02 10/21/02
John Swallow	\$2000.00 \$4000.00	12/31/03/ 12/31/03	\$5000.00	10/08/02
Geoff Davis	\$250.00 \$250.00 \$1000.00 \$2000.00 \$2000.00	03/28/02 05/15/02 10/16/02 02/26/03 02/26/03	\$5000.00 \$5000.00	10/08/02 06/19/03
Tim Hutchinson	\$300.00	03/28/02	\$5000.00	09/27/02

25044111003

Family First (Contributions)				
<i>Candidate</i>	<i>Nesbitt, Quentin Contribution</i>	<i>Date and Amount</i>	<i>FF Contribution</i>	<i>Date</i>
Edwin Williams	\$200.00	02/23/98	\$1000.00	03/24/98
	\$300.00	04/28/98	\$1000.00	06/17/98
			\$4000.00	09/30/98
John Boehner	\$1000.00	03/04/97	\$1000.00	09/09/98
	\$1000.00	02/10/98		
	\$1000.00	02/22/99		
	\$1000.00	03/22/00		
Steve Chabot	\$1000.00	01/22/98	\$1000.00	08/31/98
	\$1000.00	09/03/98		
	\$1000.00	03/19/99		
	\$500.00	06/08/00		
	\$500.00	06/08/00		
	\$1000.00	06/08/00		
	\$1000.00	03/20/02		
Gary Bauer	\$1000.00	03/30/99	\$1000.00	12/21/99
Geoff Davis	\$250.00	03/28/02	\$500.00	12/20/01
	\$250.00	05/15/02	\$2000.00	05/23/02
	\$1000.00	10/16/02	\$5000.00	03/31/03
	\$2000.00	02/26/03		
	\$2000.00	02/26/03		
Family First	\$5000.00	03/31/03	-	-

Majority Initiative to Keep Electing Republicans Fund (Contributions)				
<i>Candidate</i>	<i>Nesbitt, Quentin Contribution</i>	<i>Date and Amount</i>	<i>MIKE R Fund Contribution</i>	<i>Date</i>
Edwin Williams	\$200.00	02/23/98	\$1000.00	03/24/98
	\$300.00	04/28/98	\$1000.00	06/17/98
			\$4000.00	09/30/98
John Swallow	\$-2000.00	12/31/03	\$2000.00	10/29/02
	\$4000.00	12/31/02		
Patrick Toomey	\$250.00	02/11/04	\$1000.00	03/19/02
	\$250.00	04/07/04		
Geoff Davis	\$250.00	03/28/02	\$1000.00	09/17/02
	\$250.00	05/15/02	\$2000.00	09/30/03
	\$1000.00	10/16/02		
	\$2000.00	02/26/03		
	\$2000.00	02/26/03		
National Republican Congressional Committee	\$5000.00	09/07/00	\$4000.00	07/30/02
	\$7500.00	10/17/02	\$6000.00	10/30/02
MIKE R Fund	\$1000.00	09/23/03	-	-

25044111005

Milead Fund (Contributions)				
<i>Candidate</i>	<i>Nesbitt, Quentin Contribution</i>	<i>Date and Amount</i>	<i>ML Contribution</i>	<i>Date</i>
Milead Fund	\$1000.00	09/23/03	-	-
National Republican Congressional Committee	\$5000.00 \$7500.00	09/07/00 10/17/02	\$15000.00	10/23/02
Patrick Toomey	\$250.00 \$250.00	02/11/04 04/07/04	\$1000.00	10/29/02
Geoff Davis	\$250.00 \$250.00 \$1000.00 \$2000.00 \$2000.00	03/28/02 05/15/02 10/16/02 02/26/03 02/26/03	\$500.00 \$1000.00	10/30/02 09/30/03
Tim Hutchinson	\$300.00	03/28/02	\$1000.00	10/29/02

**Carolina Majority PAC
(Contributions)**

<i>Candidate</i>	<i>Nesbitt, Quentin Contribution</i>	<i>Date and Amount</i>	<i>CM PAC Contribution</i>	<i>Date</i>
Patrick Toomey	\$250.00 \$250.00	02/11/04 04/07/04	\$500.00	07/17/02
Geoff Davis	\$250.00 \$250.00 \$1000.00 \$2000.00 \$2000.00	03/28/02 05/15/02 10/16/02 02/26/03 02/26/03	\$2000.00	09/30/03
Carolina Majority PAC	\$2000.00	09/23/03	-	-

28044211006

BEFORE THE FEDERAL ELECTION COMMISSION

Quentin Nesbitt

}
}
}

MUR 5445

AFFIDAVIT OF QUENTIN NESBITT

I, Quentin Nesbitt, hereby swear that the following information is based on my personal knowledge, that I am competent to testify, and that it is both true and correct:

1. Attached hereto is a true and correct copy of the contribution checks I wrote to the political committees indicated and at issue in this matter.
2. I did not instruct the officers or agents of the political committees indicated in the attachment hereto to contribute to *Geoff Davis for Congress*, place a designation upon my contributions to these committees, impose an encumbrance upon my contributions to them, or otherwise have knowledge that these committees would contribute to *Geoff Davis for Congress*. It was my understanding that all contributions I made to these committees were in their complete control.
3. I never asked any officer or agent of Campaign for Working Families ("CWF") to direct my contribution to CWF to *Geoff Davis for Congress*. I did, however, request CWF Chairman Gary Bauer to get behind the Geoff Davis' candidacy by using his influence to unite local conservative leaders and provide some early financial assistance to discourage other potential primary election challengers.

Quentin Nesbitt

Signed and sworn to before me this ____ day of June, 2004.

NOTARY PUBLIC

My commission expires: